

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ZERO-MERCURY-ADDED
ALKALINE BATTERIES, PARTS
THEREOF, AND PRODUCTS
CONTAINING SAME**

Inv. No. 337-TA-493

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW
AN INITIAL DETERMINATION TERMINATING THE INVESTIGATION
WITH RESPECT TO THREE RESPONDENTS ON THE
BASIS OF A SETTLEMENT AGREEMENT**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) granting the joint motion of complainants Energizer Holdings, Inc. and Eveready Battery Co., Inc., and respondents GP Batteries, International, Ltd., GPI, International, Ltd., and Gold Peak Industries (North America), Inc. to terminate the above-captioned investigation with respect to those three respondents on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205-3041. Copies of the ALJ’s ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 27, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Co., Inc., both of St. Louis, MO, 68 *Fed. Reg.* 32771 (2003). The complaint as amended alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1-12 of U.S. Patent No. 5,464,709. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The Commission named as respondents 26 companies located in the United States, China, Indonesia, and Japan.

On February 4, 2004, complainants and respondents GP Batteries, International, Ltd., GPI, International, Ltd., and Gold Peak Industries (North America), Inc. (collectively the “Gold Peak Respondents”) filed a joint motion to terminate the investigation as to the Gold Peak Respondents on the basis of settlement agreement. On February 17, 2004, the Commission investigative attorney filed a response supporting the motion. On February 17, 2004, a group of nine Chinese battery companies that are also respondents (“Chinese Respondents”) in the investigation filed a response in opposition to the motion to terminate. They opposed termination of the Gold Peak Respondents because they contended that the settlement agreement did not contain all the terms of the settlement, and therefore the settlement agreement did not comply with Commission rule 210.21(b)(1). They also contended that the settlement agreement is anticompetitive and interferes with the administration of justice because there were some unresolved ethical issues concerning the Gold Peak Respondents’ attorney.

On March 3, 2004, the ALJ issued the subject ID (Order No. 125) terminating the investigation as to the Gold Peak Respondents on the basis of a settlement agreement. He indicated that the settlement agreement complies with Commission rule 210.21(b)(1). He found that, although the settlement agreement indicates that the parties will try to negotiate a license agreement, there are no other agreements between the Gold Peak Respondents and complainants at this time. The ALJ further noted the Chinese Respondents’ arguments concerning anticompetitive effects and some unresolved ethical issues concerning the Gold Peak Respondent’s attorney, but he indicated that he did not find that either constituted the extraordinary circumstances that would warrant denying the motion to terminate.

No party petitioned for review of the ID pursuant to 19 C.F.R. § 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 C.F.R. § 210.44. The ID thus became the determination of the Commission pursuant to 19 C.F.R. § 210.42(h)(3).

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. § 210.42.

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: March 30, 2004